

Before the  
Federal Communications Commission  
Washington, D.C. 20554

MAILED

APR -4 2007

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In the matter of

Amendment of Section 73.202(b),  
Table of Allotments,  
FM Broadcast Stations.

(Midway, Falmouth and Owingsville,  
Kentucky)

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MB Docket No: 05-248  
RM-1 1262

### REQUEST FOR SUPPLEMENTAL INFORMATION

Adopted: March 28, 2007

Released: March 30, 2007

By the Assistant Chief, Audio Division, Media Bureau:

1. The Audio Division has before it the *Notice of Proposed Rule Making and Order to Show Cause*<sup>1</sup> issued at the joint request of L.M. Communications of Kentucky, LLC ("LMC"), licensee of Station WBTF(FM), Midway, Kentucky, and Gateway Radio Works, Inc. ("Gateway"), licensee of Station WKCA(FM), Owingsville, Kentucky (jointly, "Petitioners"). We also consider a counterproposal tiled by Educational Media Foundation ("EMF"),<sup>2</sup> licensee of Station WHIR-FM, Danville, Kentucky, and a counterproposal, later withdrawn, tiled by West Portsmouth Broadcasting Company. Also before us are a Hammond Broadcasting opposition to *Order to Show Cause* and various other pleadings.<sup>3</sup>

2. The *NPRM* proposed to substitute Channel 298C3 for Channel 300A at Midway, Kentucky, at a new site, and modify Station WBTF(FM)'s license to reflect the changes. To accommodate the Midway substitution, LMC and Gateway proposed to substitute Channel 295A for 299A at Owingsville, Kentucky, at a new site, and modify Station WKCA(FM)'s license to reflect the changes. In its reply comments, LMC proposed an amended site for Station WBTF(FM) on Channel 298C3 at Midway which could remove the mutual exclusivity between Petitioners' proposal and EMF's counterproposal, rendering both of them grantable.

3. In addition, to accommodate the proposed Midway substitution, LMC also requested the substitution of Channel 300A for Channel 298A at Falmouth, Kentucky at Station WIOK(FM)'s licensed site and the modification of Station WIOK(FM)'s license to reflect the new channel. This proposal required the issuance of an *Order to Show Cause* directed to Hammond Broadcasting, Inc., Ltd. ("Hammond"), licensee of Station WIOK(FM), Falmouth, Kentucky, to show cause why Station WIOK(FM)'s license should not be modified to specify operation on Channel 300A.

4. Hammond Broadcasting responded to the *Order to Show Cause* and opposed the substitution of Channel 300A for Channel 298A at Falmouth. In its Opposition, Hammond states that Station WIOK(FM)'s operation on Channel 300 would greatly increase interference on an FAA localizer into

<sup>1</sup> *Midway, Falmouth and Owingsville, KY*, Notice of Proposed Rule Making, 20 FCC Rcd 13019 (2005)

<sup>2</sup> EMF's counterproposal requested the allotment of Channel 296A from Danville to Wilmore, Kentucky, and the modification of Station WHIR-FM's license accordingly.

<sup>3</sup> These pleadings include LMC's Reply Comments, Hammond Broadcasting's Comments, and EMF's comments.

Cincinnati/Northern Kentucky Regional Airport. It includes an engineering report and a ~~report~~ from an aviation consultant, who conclude that Channel 300 would create a degree of electromagnetic interference that would not be allowed by the FAA, based on their collective experience in this field. Hammond concludes that the presumption that the Station WIOK(FM) site is a usable site for Channel 300 is rebutted by this analysis and that the proposal should be denied on this basis.

5. We need additional information regarding the technical feasibility **of** the use of Channel 300A at Station WIOK(FM)'s transmitter site. The underlying requirement for an allotment is the reasonable expectation that a useable site is available for the channel complying with the minimum spacing requirements. We will not allot or substitute a channel where a properly spaced site is technically infeasible. Although the Commission generally presumes in rule making proceedings that a technically feasible site is available, that presumption is rebuttable.<sup>4</sup> In this case we consider only the existing transmitter site from which Station WIOK(FM) is operating.'

6. LMC argues that the issue of FAA approval is one that should be addressed at the time an application is filed. We disagree. In the course of this allotment proceeding, the requested channel substitution will result in a license modification to an on-air station whose operation could be disrupted by its location near an airport. Before that channel substitution can be made in this proceeding, FAA approval is necessary to determine that the site is feasible.

7. We agree that Hammond has raised an issue that Channel 300A may not be available at Falmouth at the licensed Station WIOK(FM) site. However, we also agree with LMC that the studies submitted in support of Hammond's opposition do not provide conclusive proof that the station will be denied FAA approval, or that the site is unusable! Without additional information, we are unable to make a determination that the channel is not useable at Falmouth. Accordingly, we request that the parties submit additional documentation, such as a determination from the FAA, to establish whether Channel 300A is available at the licensed Station WIOK(FM) site.' In addition, LMC will be required to pledge specifically that it will reimburse Hammond for all costs associated with this channel change, including FAA-required changes at the airport, if they are deemed necessary to use Channel 300A at Falmouth.

8. Interested parties may file comments on or before April 30, 2007. Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554. Additionally, a copy of such comments should be served on the following:

Hammond Broadcasting, Inc  
13297 Green Road  
Walton, Kentucky 41094

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<sup>4</sup> See *Sari Clemente, California*, Memorandum Opinion and Order, 3 FCC Rcd 6728 (1988), *appeal dismissed sub nom. Mount Wilson FM Broadcasters, Inc. v. F.C.C.*, 884 F.2d 1462, (D.C.Cir. 1989).

<sup>5</sup> Although LMC argues that another site could be available from which Channel **300A** at Falmouth could operate in compliance with our rules, the Commission will not force a licensee to change its transmitter site involuntarily. See. *Claremore, Locust Grove and Nowata, Oklahoma and Barling, Arkansas*. Report and Order, 4 FCC Rcd 2181 (MMB 1989); see also *Johannesburg and Edwards, California*, Report and Order, 15 FCC Rcd 15801 (MMB 2000).

<sup>6</sup> See. e.g., *lone, et al., Oregon. Walla Walla Washington, and Monument. et al. Oregon, Weiser, Idaho and Goldendale, Washington*. Report and Order, 12 FCC Rcd 10017 (MB 2006); *Bethel, Alaska*, Report and Order, 5 FCC Rcd 2546 (1990).

<sup>7</sup> The coordinates for this site are NL 38-35-13 and WL 84-21-40.

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9. For further information concerning this proceeding, contact Victoria M. McCauley, Media Bureau, (202) 418-2180. For purposes of this restricted notice and comment rulemaking proceeding, members of the public are advised that no *ex parte* presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An *ex parte* presentation is not prohibited if specifically requested by the Commission or the staff for clarification or adduction of evidence or resolution of the issues in the proceeding. However, any new written information elicited from such request or summary of any new information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives the service requirement. Any comment which **has** not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in this proceeding. Any reply comment which has not been served on the person(s) who tiled the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in this proceeding.

FEDERAL COMMUNICATIONS COMMISSION

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Media Bureau